BAIL SLIP

The Appellant/Accused Viz. Kamu alias Kamaraj was directed to be directed to be released on bail in by the order of this Court dated 23.4.2003 and made in Crl.M.P.No.3219/2003 in Crl.A.No.1773 of 2002.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2006

CORAM :

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

AND

THE HONOURABLE MR.JUSTICE AR. RAMALINGAM

CRIMINAL APPEAL No.1773/2002

Kamu @ Kamaraj : Appellant

Vs.

The State rep. By
Inspector of Police,
Maduravoyal Police Station : Respondent
Crime No.287/1996.

PRAYER: Appeal filed against the conviction and sentence passed by the Principal District and Sessions Judge, Chengleput, in S.C.No.191/2000 dated 29.04.2002.

For Appellant : Mr.R.Subramanian, Senior counsel
for Mr.S.D.Venkatesan
For Respondent : Mr.E.Raja, Additional Public Prosecutor

J U D G M E N T

(JUDGMENT OF THE COURT WAS DELIVERED BY M.KARPAGAVINAYAGAM, J.)

Kamu @ Kamaraj, the appellant herein, has filed this Criminal Appeal challenging his conviction for offence under Section 302 IPC. Originally, the appellant was charged for offence under Sections 302 and 324 IPC. But, he was not found guilty of the offence under Section 324 IPC.

2.Case of the prosecution in brief is as follows ::-

a)PW-1 - Muthu is the uncle of the deceased Vellaithevan, aged about sixteen years. PW-2 is the mother of PW-1. PW-3 is closely related to PW-2. PW-4 is the husband of PW-3. The above four prosecution witnesses

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and the accused are residing in the same area and doing fish vending business.

b)On 22.02.1996 at about 6.00 pm, the deceased came to PW-1 and complained that the accused had beaten him. When PW-1 went to the accused and questioned him, the accused beat PW-1 also. Then PW-1 and the deceased returned home. Immediately thereafter, the accused came to the house of PW-1 and began to stab the deceased above his hip and other parts of his body. PW-2 – Muniammal who was standing in Temple along with PW-1, witnessed the occurrence. PW-2 - mother of PW-1, intervened and questioned the accused. The accused stabbed PW-2 also and fled away. The deceased on receipt of the injuries ran up to tea shop and fell down. PW-4-Boominathan, husband of PW-3 came to the scene and took the deceased to Kilpauk Hospital where he was declared dead.

c)On 22.02.1996, at about 10.30 p.m., PW-1 went to Police Station and gave complaint [Ex.P-1], registered as First Information Report [Ex.P-6], in Cr.No.287/1996 for offences under Sections 324 and 302 IPC.

d)PW-7 – Inspector of Police on receipt of the message, took up investigation and observed all the formalities viz., preparation of Observation Mahazar and Rough Sketch. On the next day, he took sample earth and bloodstained earth under the cover of mahazar. Then on 23.02.1996, between 8 a.m. and 11.00 a.m., he conducted inquest over the body of the deceased and prepared inquest report-Ex.P.10. Then he sent the body for postmortem.

e)PW-6 – Doctor attached to the Kilpauk Medical College Hospital, conducted postmortem on the body of the deceased on 23.02.1996 at about 1.15 p.m. and found various abrasions and incised wounds and two stab wounds. Then, he issued the Postmortem Certificate - Ex.P-5, opining that the deceased would appear to have died due to shock and haemorrhage due to stab injuries on the left lung and right femoral artery.

f)PW-7 took steps to arrest the accused. In the meantime, on 25.02.1996, the accused surrendered before the XVII Metropolitan Magistrate, Saidapet and he was sent to police custody. While in police custody, the accused gave voluntary confessional statement to PW-7, the admissible portion of which was marked as Ex.P-2. Pursuant to the voluntary confession, MO-1-knife was recovered from the accused. Then, the material objects collected were sent for Chemical Analysis.

g)After completion of the investigation, Charge Sheet was laid against the accused for offences under Section 324 and 302 IPC.

3.To establish the guilt of the accused, prosecution has examined P.Ws. 1 to 7 and marked Exs.P-1 to P-14 and produced material objects M.Os. 1 to 5.

4.Plea of the accused, when examined under Section 313 Cr.P.C, was one of total denial. No evidence was adduced on the side of the defence.

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5.The trial Court after having analysed the evidence adduced by the prosecution, convicted the accused for the offence under Section 302 IPC, while acquitting him under Section 324 IPC.

6.Mr.R.Subramani, learned Senior Counsel appearing for the appellant/accused took us through the entire evidence and contended that available evidence would not be sufficient to connect the accused with the crime, as there are many infirmities. According to him, the medical evidence is at variance with the ocular evidence of PW-3, who has stated that only one stab injury was inflicted on the deceased, whereas the Doctor has detailed several injuries. Moreover, the motive has not been established. And there are various latches in the investigation conducted by PW-7. Prosecution case is further weakened by the evidence of P.Ws. 1 and 2, who have turned hostile. P.Ws. 3 and 4 would not have been present in the place of occurrence and as such, their evidence could not be relied upon.

7.On these aspects, we have heard the learned Additional Public Prosecutor.

8.We have given our thoughtful consideration to the rival contentions urged on either side and perused the records.

9.According to the prosecution, the accused attacked the deceased and when this was complained by the deceased to PW-1, PW-1 questioned the accused and he was also beaten up. Thereafter, the accused came to the house of PW-1 and stabbed the deceased with knife. This was objected to by PW-2 - mother of PW-1 and she was also attacked. The deceased ran away from the scene and fell down near a Tea Stall. In the meantime, the accused also ran away.

10.PW-1 is the author of the First Information Report. PW-2 is an injured witness. Unfortunately, P.Ws. 1 and 2 turned hostile. The available evidence to support the prosecution is only P.Ws. 3 and 4. PW-3 is an eye witness and PW-4 though did not see the occurrence, saw the accused running away from the scene with bloodstained knife. He also told P.W.s 2 and 3 that the accused stabbed him and ran away.

11.The main thrust of argument advanced by the learned Counsel for the appellant/accused is that PW-3 would not have seen the occurrence since P.W.3 would state that the deceased was stabbed only once, on the other hand, PW-6 Doctor would state that there are several injuries - stab injuries and incise injuries and on that reason, evidence of PW-3 should be discarded. The learned Counsel also placed reliance on two decisions reported in 2004 [4] Crimes 42 [State of Rajasthan vs. Bhanwar Singh] and 1997 Cr.L.J. 3773 [Sreenivasan and others vs. state by Inspector of Police, Chittamur Police Station] to substantiate the plea that if medical evidence is not corroborating the ocular evidence, that would be a ground to acquit the accused.

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12.We have carefully considered the above submission. In our view, merely because PW-3 did not speak about the other stabs, we cannot disbelieve PW-3, as her evidence is so cogent and natural. Admittedly, she is one of the fish vendors residing in the same area. Further, her name has been mentioned in Ex.P-1, which is the earliest document in this case. Though PW-1 did not support the prosecution case, he admitted that he has given complaint and the complaint was signed by him. The names of P.Ws.3 and 4 have been specifically mentioned by PW-1 and P.Ws. 3 and 4 were examined during the inquest conducted by PW-7, Inspector of Police, on the next day of the occurrence.

13.Further, PW-3 would also state that after the occurrence, PW-4 came and he only took steps to take the deceased to the hospital. PW-4 would also corroborate this. PW-4, even though did not see the occurrence, saw the accused running away from the scene with bloodstained weapon, which has been recovered by PW-7 on the confession of the accused during police custody. Further, PW-4 would state that PW-3 informed him that the accused only stabbed the deceased and ran away from the scene. So, this aspect also would be admissible as it is a res gestae evidence. Therefore, the evidence of PW-3 cannot be disbelieved on the reason that she did not account for other injuries.

14.A perusal of the evidence of PW-3, both in chief and in cross examination, would clearly indicate that she was at temple at the time of occurrence. The distance between the temple and the scene of occurrence is twenty meters. According to the prosecution, the accused attacked the deceased, in front of the house of PW-1 and at that time, PW-3 came, after the commencement of the occurrence, as per Ex.P-1. So probably, PW-3 would have seen the last portion of the occurrence and in that event, she could say only the portion which she witnessed. Therefore, merely because she did not mention about the other stab injuries inflicted by the accused on the deceased, it cannot be said that PW-3 has to be treated as an unreliable witness.

15.On the other hand, in the cross examination of P.Ws. 3 and 4, nothing has been elicited, indicating that they were inimical towards the accused. As a matter of fact, they have no axe to grind as against the accused, nor is it elicited that they are interested witnesses of the prosecution. As a matter of fact, P.Ws. 1 and 2 who are closely related to the deceased have turned hostile. We have no hesitation to place reliance upon the evidence of P.Ws. 3 and 4 and on that reason we have to hold that the prosecution has established the guilt of the accused beyond all reasonable doubt.

16.On the motive aspect, the learned Counsel for the appellant has cited the decisions reported in AIR 2002 SC 2787 [Dhannjai Shankar Shetty vs. State of Maharashtra] and AIR 1997 SC 3818 [State of Bihar Vs.Bishwant Rai and others] to show that when there is doubt with reference to the ocular testimony, failure to establish the motive will assume

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significance. But in this case, as indicated above, even though motive has not been established by the prosecution, the ocular testimony rendered by PW-3, in our view, gives clear account of the occurrence, which has been sufficiently corroborated by medical evidence and also a portion of it has been corroborated by PW-4. Hence we see no merit in the appeal.

17.The appeal is dismissed confirming the conviction and sentence imposed on the appellant by the trial Court.

18.The trial Court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Principal District and Sessions Judge, Chengleput

2.The Superintendent, Central Prison, Chennai.

3.The Public Prosecutor, High Court, Madras.

4.The Inspector of Police,
Maduravoyal Police Station

5.The Judicial Magistrate No.11, Poonamalee

6. -do- through the Chief Judicial Magistrate, Chengalpet.

7. The District Collector, Kanchipuram

8.The Director General of Police, Chennai-4.

+ 1 CC To Mr. S.D.Venkatesan, Advocate SR NO. 17078

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